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# CITY OF CHICAGO

## RULES

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### **RULES OF THE CHICAGO BOARD OF ETHICS**

### **UNDER 2-156**

**LAST UPDATED: K**

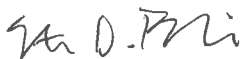


**Mayor Rahm Emanuel**

**Executive Director Steven I. Berlin**

BY AUTHORITY VESTED IN THE EXECUTIVE DIRECTOR OF THE BOARD OF ETHICS PURSUANT TO 2-156, THE FOLLOWING RULES REGARDING THE CHICAGO BOARD OF ETHICS ARE ADOPTED HEREIN.

By Order of the Executive Director:

Signed:   
Executive Director Steven I. Berlin

Date: 1-5-17

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## **Rule 1. Jurisdiction of the Board of Ethics**

### **1-1. Introduction**

### **1-2. Rulemaking authority**

### **1-3. Scope of Rules**

### **1-4. Amendment of Rules**

### **1-5. Definitions**

#### **1-1. Introduction**

The Chicago Board of Ethics (the “Board”) was created to administer the City’s Governmental Ethics Ordinance (the “Governmental Ethics Ordinance” or “Ordinance”), which is Chapter 2-156 of the Municipal Code of the City of Chicago (“the Code”). The Board is charged with maintaining records, educating City employees, officials, lobbyists and the public regarding ethical standards in Chicago government, issuing confidential advisory opinions, and adjudicating and/or settling charges resulting from investigations regarding matters related to the Ordinance.

#### **1-2. Rulemaking authority**

Pursuant to §2-156-380(h) of the Ordinance, the Board is authorized to promulgate these rules and regulations (“Rules”) for the conduct of its activities, including procedural rules consistent with the requirements of due process of law.

#### **1-3. Scope of Rules**

(1) These Rules shall govern proceedings involving the Board with the force of law, provided however, that, to the extent that anything in these Rules conflicts with the Ordinance, the Ordinance shall govern.

(2) Nothing in these Rules shall be deemed to diminish the rights, privileges, or remedies of a City of Chicago employee or official pursuant to a collective bargaining agreement or under any other federal or State law, rule, or regulation. To the extent that a collective bargaining agreement provides greater protections to a represented employee who is a “subject” or “respondent” (as those terms are used in these Rules), the provisions of the agreement shall govern.

#### **1-4. Amendments of Rules**

Proposed amendments to these Rules shall be submitted to the City Council, pursuant to Rule 1-2 and §2-156-380(h) of the Ordinance, upon the approval of a majority of the Board.

#### **1-5. Definitions**

For purposes of these Rules, the following terms shall have the following meanings:

(a) "Advisory opinion" means: (i) a formal written opinion issued by the Board pursuant to §2-156-380(1) of the Ordinance; or (ii) written, electronic or oral guidance (then memorialized in a written record) rendered by Board staff in response to a question concerning any activity or subject that falls under the ambit of the Ordinance (referred to as “Informal Advisory Opinions” in Rule 3-2).

(b) "Board" means the Chicago Board of Ethics.

(c) “Chair” means the Chair of the Board.

(d) “City agency” means the City Council or any committee or subdivision thereof, any City department or other administrative unit, or commission, board or other division of the government of the City.

(e) “City Council employee” has the definition ascribed to the term in §2-55-010 of the Code.

(f) “Days” means City business days.

(g) “Executive director” means the person appointed by the Mayor subject to approval of the City Council pursuant to §2-156-310 of the Ordinance.

(h) “Hearing officer” means an administrative law officer appointed by the Department of Administrative Hearings, in consultation with the Board of Ethics, to the dedicated function of conducting hearings on the merits pursuant to these Rules.

(i) “Investigating authority” means the Inspector General or the Legislative Inspector General.

(j) “Investigation” means an inquiry conducted by an investigating authority, as duly authorized under the Code, into an allegation or a complaint regarding a violation of the Ordinance.

(k) “Probable cause” means a reasonable ground for the Board to believe that the evidence that an investigating authority presents in an investigative report would constitute a violation of this chapter, if not overcome by any materials or evidence submitted by the subject pursuant to §2-156-385(3) of the Ordinance.

(l) “Request for an Investigation” means a request for an investigation based on an alleged violation of the Ordinance.

(m) “Representative” means the attorney and/or other representative, including a union representative, if any, of a person subject to an ethics investigation, probable cause finding, merits hearing or adjudication.

(n) “Staff” or “Board staff” means the persons employed by the Board, including the Executive Director.

(o) “Writing” means a hand-written, typed, scanned, word-processed, texted, instant messaged, or emailed document, regardless of the manner in which the Board receives or sends it.

Other terms used in these Rules shall have the meaning ascribed to them in §2-156-010 of the Ordinance.

## **Rule 2. Board Meetings**

- 2-1. Governing procedures**
- 2-2. Quorum**
- 2-3. Conference telephone calls**
- 2-4. Majority vote**
- 2-5. Conflict of interest and recusal**
- 2-6. Notice of meetings**
- 2-7. Board sessions**
- 2-8. Minutes**
- 2-9. Recording of open session meetings**
- 2-10. Responsibilities of staff**
- 2-11. Conduct of the public portion of the open session meeting**
- 2-12. Appearances before the Board**
- 2-13. Service of documents by the Board**

### **2-1. Governing procedures**

Wherever these Rules are silent, the Board shall conduct its meetings in accordance with the current edition of Robert's Rules of Order.

### **2-2. Quorum**

Four members of the Board physically present at a meeting shall constitute a quorum. No meeting shall commence or continue in the absence of a quorum. Members may also be present either in person or via an open telephone broadcast over a speaker phone or similar device (as provided in these Rules and pursuant to the Illinois Open Meetings Act, 5 ILCS 120/1 *et seq.*, as amended ("Open Meetings Act"), so long as a quorum is present in person.

### **2-3. Conference telephone calls**

(1) "Conference telephone call" includes video-conferencing computer-conferencing, or other means of contemporaneous interactive communication, made available to all participants.

(2) So long as a quorum is present in person, the Board may consider, discuss and make determinations on any matter if one or more members are participating through a conference telephone call. The call shall be broadcast over a speaker phone or similar device. The entire conference shall also be recorded by an assigned staff person. A "conference telephone call" is permitted only if the non-attendant participant(s) are not attending because of one or more of the following reasons: (i) illness or disability; (ii) employment purposes or business of the Board; or (iii) a family or other emergency; and only if the non-attending member(s) give(s) reasonable notice to Board staff.

### **2-4. Majority vote**

No determination of the Board shall be rendered on any matter without the approval of a majority of the quorum attending in person. A determination may not be rendered if a member whose physical presence is necessary to maintain a quorum recuses him- or herself from consideration of the matter because of a conflict of interest or other concern causing recusal. A determination may be rendered if a member of the quorum abstains and the vote still demonstrates more "yeas" than "nays."

### **2-5. Conflict of interest and recusal**

(1) No Board member shall participate in the consideration of or vote on any matter if: (i) that matter concerns a business or legal relationship of that member; or (ii) that matter involves an individual with whom the member has or expects to have significant dealings in a public or private capacity; or (iii) such participation or vote would cause the appearance of impropriety on the part of that member or of the Board in general.

(2) If any recusal is of a member whose presence is necessary for a quorum, the remaining members may not conduct the business of the Board with respect to that matter.

#### **2-6. Notice of meetings**

With respect to all Board meetings and notices thereof, the Board shall comply with the Open Meetings Act.

#### **2-7. Board meeting sessions**

Board meetings shall be conducted in two separate sessions:

(1) Open Session: To provide an open meeting in which non-confidential matters are presented to the Board, staff and public, including reports by Board members, the Executive Director, or such other persons as may be appropriate.

(2) Executive Session: To ensure the confidentiality of the proceedings, the Board, upon a majority vote, shall meet in executive session, pursuant to the Open Meetings Act.

#### **2-8. Minutes**

(1) Minutes of both the open and executive sessions shall be kept by the staff. Each Board member's vote shall be recorded.

(2) The minutes of all open session Board meetings shall be available to the public for inspection at the offices of the Board during regular office hours and in such other manner as the Board directs, or as otherwise required by the law.

(3) Upon request, a copy of the minutes of any open session meeting of the Board shall be provided to the public at no more than cost, which shall not exceed costs provided for in the Illinois Freedom of Information Act, 5 ILCS 140, *et seq.*, as amended, ("FOIA").

(4) The minutes of all Board meetings conducted in executive session shall be available only to members of the Board and authorized personnel, consistent with the FOIA and the Open Meetings Act.

#### **2-9. Recording of open session**

(1) Under §2.05 of the Open Meetings Act, the Board hereby prescribes Rules for the public to record the open session portion of the Board's meetings. The Rules shall be in accord with 1975 Ill. Attorney General Opinion 17 so that recordings shall not interfere with the overall decorum and proceeding of the meeting and the Rules shall not be in derogation of the Open Meetings Act and are severable if in conflict with the Open Meetings Act.

(2) In accordance with the Open Meetings Act, witnesses shall not be recorded if they are subject to 735 ILCS 5/8-701 of the Illinois Code of Civil Procedure.

(3) Recording devices used to make recordings of the open session portion of the Board's meetings include audio or video recording machines and ancillary equipment, and shall not block aisles, entrances or exits.

(4) The Chair shall have discretion in granting special accommodation requests in: (i) designating locations for recording devices; (ii) allowing the movement of recording devices, but only so long as the movement does not violate any of these Rules; (iii) restricting movement of recording devices, so long as in accordance with the Open Meetings Act; (iv) announcing, if known, that the meeting is being recorded; (v) advising all witnesses of their rights to refuse to testify during recording as prescribed by the Open Meetings Act and 735 ILCS 5/8-701 of the Illinois Code of Civil Procedure; (vi) prohibiting recording during testimony by a witness subject to 735 ILCS 5/8-701; and (vii) imposing other rules necessary to

achieve the rubric set forth in 1975 Ill. Attorney General Opinion 17, including immediately terminating any recording or attendant act or omission if it is not in conformance with the Board's Rules or the Open Meetings Act.

#### **2-10. Responsibilities of staff**

The staff shall make all necessary preparations for any meeting of the Board. This shall include, but is not limited to:

- (1) Arranging for and providing proper facilities and equipment for each meeting;
- (2) Notifying members of the public and media of the time and place of the meeting;
- (3) Providing all necessary materials and information to each Board member regarding the matters to be discussed at the meeting;
- (4) Providing a person to record the minutes and votes of the meeting.
- (5) As directed by the Board and Executive Director, staff shall also carry out the advisory, adjudicative, clerical, administrative or other duties and tasks necessary to the functioning of the Board, including presenting to the Board drafts of formal advisory opinions.

#### **2-11. Public participation in the open session**

- (1) All rules with respect to the public's right and exercise of that right to speak to the Board shall be in accordance with the Open Meetings Act.
- (2) All rules with respect to the public's right to speak to the Board shall be exercised in a manner not to disrupt the orderly conduct of a Board meeting, and shall be reasonably, consistently and evenly applied and determined by the Chair.
- (3) The public's right to speak to the Board may be exercised only during the open session portion of the Board's meetings.
- (4) The public may exercise its right to speak as described in this Rule 2 in person, or through a writing submitted in advance of the meeting to the Executive Director of the Board. The Chair shall read the letter at the appropriate time determined by the Chair during the open session of the Board's meeting. The letter shall become part of the record of the meeting.
- (5) There is no obligation for Board members to speak to the public; however, they are not precluded from doing so.
- (6) Regardless of whether they are included on the open session agenda, members of the public may exercise their right to speak for a collective period when the Chair so provides for public comment. The Chair may state when the public comment period opens. The Chair may limit a person's comments as appropriate.
- (7) If the Chair determines there is an exigency causing the Chair to provide more time to the public to speak, the Chair may extend the period of time. The Chair may request that an appropriate matter be presented to the Board in closed session.

#### **2-12. Appearances before the Board**

Whenever these Rules or the Ordinance provide for a meeting or hearing with the subject of an investigation, that subject may appear before the Board, its designee, or any hearing officer appointed pursuant to Rule 4 on his or her own behalf, and/or with or through an attorney or other representative,

such as a union official. Any representative appearing on behalf of a subject shall file a notice of appearance with the Board, its designee, or hearing officer in a manner designated by the Board, designee or hearing officer. The filing of a notice of appearance constitutes a representation that the person appearing has been authorized by the person subject to these Rules or the Ordinance.

### **2-13. Service of documents by the Board**

Any notice, formal advisory opinion, letter of admonition or warning, determination, finding, or other recommendation or other served document required by these Rules shall be served by the Board or its staff:

- (i) via personal delivery or overnight delivery service to the addressee's last known residence or place of business;
- (ii) by both certified mail, return receipt requested, and first class mail to the addressee's last known residence or actual place of business. Such notice shall also include the following: "You have the right to have a union representative [if applicable] or legal counsel present with you. If you desire to have a representative present, it is your responsibility to contact and inform him/her of the time and location of the meeting or hearing."
- (iii) in such manner as the Board directs, if service is impracticable under paragraphs (i) and (ii) above; or
- (iv) in any manner agreed upon by the Board and the addressee or his or her attorney or representative, including email.

Where the addressee has appeared through a representative (in accordance with Rule 2-12, above), all documents served by the Board subsequent to that appearance shall also be served upon the representative by one of the methods listed above.

### **Rule 3. Advisory Opinions**

- 3-1. Authority to render advisory opinions**
- 3-2. Informal advisory opinions**
- 3-3. Withdrawal of requests for advisory opinions**
- 3-4. Form of requests for all advisory opinions**
- 3-5. Reliance on advisory opinions**
- 3-6. Examination and rejection of requests for advisory opinions**
- 3-7. Adoption of formal advisory opinions**
- 3-8. Reconsideration of adopted formal opinions**
- 3-9. Confidentiality of formal and informal advisory opinions**
- 3-10. Access to advisory opinions**
- 3-11. Advisory opinions regarding past conduct**

#### **3-1. Authority to render advisory opinions**

The Board may render advisory opinions with respect to the Ordinance based upon a real or hypothetical set of circumstances, when requested by a person listed in this Rule 3-1. Such opinions rendered by the Board shall be collectively known as “formal advisory opinions”; such opinions rendered by the staff pursuant to Rule 3-2 below shall be collectively known as “informal advisory opinions.”

The Board's and staff's authority to render any advisory opinion is limited to requests from:

- (1) officials, employees, lobbyists or candidates for elected City office;
- (2) former officials or employees;
- (3) attorneys making requests on behalf of their clients, provided their clients fall within a category identified in this Rule 3-1;
- (4) City contractors; or
- (5) any other person who is directly involved in the circumstances described in the request for the opinion.

#### **3-2. Informal advisory opinions**

Questions, consultations and inquiries about or arising under the Ordinance from persons identified in Rule 3-1, other than requests for formal advisory opinions, may be answered, and confidential guidance rendered thereon, either oral or written, by the Board staff. Staff shall keep written records of its handling of such informal advisory opinions. Summaries of key or recurring informal opinions shall be submitted to the Board at regular intervals, or as requested by the Board. Each informal advisory opinion record shall, to the fullest extent possible, include the date, the name of the person requesting the informal advisory opinion, his or her address and telephone number and/or email address, the facts or hypothetical circumstances giving rise to the request, the question itself, staff's answer and advice, and the name of the staff contact.

#### **3-3. Withdrawal of requests for advisory opinions**

A person requesting an advisory opinion under Rule 3 may withdraw the request at any time. Such a withdrawal, however, in no way affects the Board's authority to issue its own opinion or take other appropriate action consistent with the Ordinance with respect to the matter.

#### **3-4. Form of request for formal advisory opinions**

To be considered a proper request for a formal advisory opinion from the Board of Ethics, a request must:

- (1) be from a person authorized to make such a request;
- (2) contain a clear statement of facts or hypothetical circumstances in sufficient detail to enable the formation of an opinion; and

(3) concern the application of the Ordinance.

The initiating request for any advisory opinion may be submitted to the Board either in writing or by telephone. However, in the case of a request by telephone, no formal Board opinion can be rendered until the request and the statement of facts or hypothetical circumstances have been confirmed in writing by the person requesting the opinion.

### **3-5. Reliance on advisory opinions**

Pursuant to §2-156-070(c) of the Ordinance, an advisory opinion may be relied upon in any investigation or disciplinary proceeding by any person involved and named in the specific transaction or activity as to that person's or persons' future conduct with respect to which the advisory opinion was rendered, to the extent the information provided to the Board and on which it based its opinion was accurate and complete.

### **3-6. Examination and rejection of requests for formal advisory opinions**

(1) The staff shall review each request for a formal advisory opinion to determine whether it satisfies Rule 3-4.

(2) If the Executive Director determines that a request has not satisfied the rules governing requests, the requesting party shall be notified by a letter explaining why the request was unacceptable, and afforded an opportunity to resubmit the request. The Board shall be notified of all such rejections of requests.

### **3-7. Adoption of formal advisory opinions**

A quorum of the Board will consider drafts of formal advisory opinions and the facts upon which they are based. The draft opinion will be adopted if approved by a majority of the lesser of the quorum or total sitting Board membership. Upon such adoption, the formal advisory opinion shall be issued bearing the date, case number and signature of the Chair of the Board, or, if the Chair is unavailable or unable to sign the opinion, the Vice-Chair or Chair *pro tem*. A copy of the formal advisory opinion shall be sent to the person who requested the opinion and the subject of the opinion, if different. Upon simultaneous notice to the person who requested the opinion and the subject of the opinion, if different, a copy may be sent to others (with an admonishment of confidentiality) if a majority of either the lesser of the quorum or total sitting Board membership determines that it is necessary in order for others to consider or act upon the Board's determinations or recommendations.

### **3-8. Reconsideration of adopted formal opinions**

(1) The person requesting a formal advisory opinion or the subject of a formal advisory opinion, if different, may request a reconsideration of the advisory opinion by sending written notice to the Board within fourteen (14) days of the signing of that decision. Such notice must contain an explanation of material facts or circumstances that were not before the Board in its deliberations on the opinion.

(2) Unless otherwise determined by the Executive Director, no requests for reconsideration shall be considered by the Board if received more than fourteen (14) days after the date of the signing of the formal opinion.

(3) A timely request for reconsideration will be presented at the next possible Board meeting. If the Board determines that these additional facts may alter its opinion, it may instruct the staff to redraft the opinion for later consideration.

(4) If the Board finds that these material facts or circumstances do not alter its decision, it shall deny the request and so notify the person requesting the reconsideration.



### **3-9. Confidentiality and dissemination of advisory opinions**

(1) The following shall remain confidential in accordance with §§2-156-380(1), 2-156-400 and/or 2-156-401 of the Ordinance or as may be otherwise required by law: (i) identity of a person requesting any formal or informal advisory opinion; (ii) and/or whether a request for an opinion was made; (iii) the substance of the request; (iv) the identity of any person(s) whose conduct is involved in the set of circumstances described in the request, or whose identity appears in or as part of any formal or informal advisory opinion; and (v) all Board and staff writings, information, communications in any manner, intelligence and knowledge, materials, files, papers, notes, drafts, minutes, memoranda or similar items in any medium, if applicable, arising from the request or from the requestor, subject, person whose identity appears as part of a request with respect to formal or informal advisory opinions or other person with whom the Board or Board staff communicated with respect to any opinion. No Board or staff member shall disclose any of these to any person or agency outside of the Board and its staff, unless required or provided by the Ordinance or these Rules, or as may be otherwise required by law. However, any party requesting or named in an advisory opinion or informal advisory opinion may waive his or her confidentiality by filing written notice with the Board, specifying to what that person waives his or her ability to assert confidentiality.

(2) A person who requested a formal or informal advisory opinion or whose conduct is the subject thereof may disseminate that opinion, provided that the person does not reveal the identity of any other person whose conduct is involved in the set of circumstances described in the advisory opinion, unless such other person also waives the confidentiality of his or her identity by filing written notice with the Board.

(3) If any person uses a Board opinion as evidence in any investigation or disciplinary proceeding, the Board shall, if presented by the investigating authority with a written, signed waiver of confidentiality from the opinion's subject, disclose non-public or confidential information as specified in the waiver relating to the advisory opinion, including the opinion itself, that does not compromise a third party's confidentiality to an investigating authority or any other City department conducting an investigation or disciplinary proceeding.

### **3-10. Public access to advisory opinions**

(1) Advisory opinions shall be made available to the public, in a manner directed by the Board, provided that the confidentiality requirements of §2-156-380(1) of the Ordinance and Rule 3-9 are observed. The Board shall indicate, in a manner it prescribes, which opinions have precedential value.

(2) Any person may obtain copies of such advisory opinions from the Board, subject to the confidentiality requirements of the Ordinance, upon request at no more than cost, which shall not exceed the cost provided for in the FOIA.

### **3-11. Advisory opinions regarding past conduct**

If any person subject to the Ordinance requests an advisory opinion regarding his or her own past conduct, the staff shall consider whether the past conduct discloses a past or ongoing violation of the Ordinance, or any other rule, statute, ordinance, or regulation.

If the conclusion of the staff is that there has not been such a past or ongoing violation, then the opinion shall remain confidential in accordance with these Rules, provided however, that the staff shall report each such opinion to the Board.

If the conclusion of the staff is that there has been such a violation, then the staff shall report the matter to the Board at the next possible Board meeting and recommend to the Board as to whether that violation is minor in nature. The Board shall then determine whether the violation was minor. In determining

whether any particular violation is minor in nature, the Board shall consider, but not be limited to, the following criteria: (i) whether the Board would still be upholding the spirit of the Ordinance; (ii) whether a reasonable person familiar with all the facts would consider the violation technical and not substantive in nature and extent; and (iii) whether the violation is part of a pattern with respect to the person whose conduct is described in the request.

(1) If the Board determines that a minor violation occurred, the Board shall issue a letter of warning or admonition for the first such violation to the person whose conduct is described in the request, either as part of or separate from any issued advisory opinion to the requestor. Such letter shall be private and subject to the Board's rules on confidentiality, provided however, that the Board may, by majority vote, make public any such letter or a summary of any such letter, with confidential or identifying information redacted.

(2) If the Board determines that the violation is not minor or is the same conduct for which the requestor has already received a letter of warning or admonition or a prior advisory opinion, then the Board's advisory opinion shall advise the requestor to: (i) immediately cease the violative conduct; and (ii) self-report his or her conduct within 14 days of the Board's determination to the appropriate investigating authority and then report to the Board, in writing, within 21 days of the Board's determination, whether and in what manner the self-reporting was accomplished.

(3) If the Board receives no such report from the requestor within the prescribed time frame, then the Board shall refer the matter to the appropriate investigating authority in writing and confidentially, and transmit a copy of this referral to the requestor. This communication shall not be a violation of the Board's confidentiality requirements.

(4) This Rule 3-11 shall apply only to conduct that occurred on or after July 1, 2013 or was occurring continuously prior to that date, but discovered after that date to still be occurring.

## **Rule 4. Probable Cause; Investigations; Adjudication Hearings and Appeals**

- 4-1. Probable cause findings pursuant to §2-156-385**
  - A. Petition from the investigating authority**
  - B. Meeting with the subject**
  - C. Board action following the meeting with the subject**
  - D. Settlement**
  - E. Fine or discipline**
- 4-2. Hearing on the merits pursuant to §2-156-392**
  - A. Action for fines, Board notices, appointment of hearing officer**
  - B. Statement of charges, response**
  - C. Motions, conduct of hearing**
  - D. Report and recommendations of hearing officer**
  - E. Final opinion of the Board**
- 4-3. Appeals**
- 4-4. Confidentiality**
- 4-5. Petitions from the Office of the Legislative Inspector General (“OLIG”) to Commence Investigations**
- 4-6. Ex parte communications**

### **4-1. Probable cause findings pursuant to §2-156-385**

#### **A. Petition from the investigating authority and preliminary Board finding**

(1) The Board has the sole statutory authority to issue a finding as to whether evidence adduced in an investigation conducted by an investigating authority warrants a finding that there is probable cause to believe that the subject of that investigation has violated the Ordinance. Accordingly, an investigating authority may request in writing that the Board find that the evidence adduced in its investigation warrants the Board’s finding that there is such probable cause, which request shall include a summary of its investigation, and supporting evidence and recommendations, provided that: (i) the investigating authority may not submit such a request until at least thirty (30) days after it has in writing notified the subject(s) of the investigation of its intention to request a probable cause finding from the Board; and (ii) that notice has specified all the Ordinance violations that the investigating authority concludes the subject engaged in, including a summary of the facts alleged to support a probable cause finding.

(2) Upon receiving a request for a finding of probable cause from an investigating authority, the Executive Director shall designate a staff attorney to review the record, including compliance with the notice requirements specified in Rule 4(i) above, and then recommend to the Board as to whether the evidence adduced warrants the Board’s finding of probable cause. The Executive Director or staff attorney shall deliver this report to the Board at the next practicable Board meeting. The report shall explain the analysis and recommendation. No recommendation, decision, conclusion or report made pursuant to this Rule 4-A(1) shall be deemed a final decision of the Board.

(3) At the next practicable Board meeting, the Board shall consider and make a finding, pursuant to §2-156-385(3) of the Ordinance, as to whether the investigating authority’s report shows probable cause; provided, however, that the Board shall make a finding of no probable cause if the person investigated properly sought, received and in good faith relied on an advisory opinion from the Board or staff with respect to the conduct investigated.

If the Board finds that the investigating authority’s report does not warrant a finding of probable cause, the Board will close the matter and, consistent with Rule 2-13 (ii), so notify in writing the investigating

authority, the person(s) who drafted the notice referred to in the first paragraph of this Rule 4(i) (if different) and the subject, together with a statement explaining its finding.

If the Board finds that the investigating authority's report does warrant a finding of probable cause, the Board shall, consistent with Rules 2-13(ii) and 4B(1) below, serve notice of the allegations upon the subject.

However, in either case, in order to make its determination, the Board may seek written clarification of any portions of the investigating authority's request or of the content of its investigation.

#### **B. Meeting with the subject**

(1) If the Board makes a finding of probable cause, pursuant to Rule 4-1.A(3) above, then, pursuant to §2-156-385(3), the Board shall, consistent with Rule 2-13, serve upon the subject, within seven (7) days of its finding, written notice containing: (i) the facts upon which the Board relied for its determination of probable cause and a statement of the provisions of the Ordinance allegedly violated; (ii) the materials provided to the Board by the investigating authority with its petition for a finding of probable cause; (iii) an explanation of the subject's right to answer the evidence and allegations, either orally or in writing, including the right to present any written materials, motions, or evidence supporting his or her position; (iv) any material in the Board's own possession that contains information exculpatory or favorable to the subject, if not confidential pursuant to these Rules or to the Ordinance; and (v) a date, time and place for the subject (and/or the subject's representative, if desired) to meet in person with the Board or its designee, which date must be at least ten (10) days after the subject submits any written materials, motions or evidence. This notice remains subject to the Ordinance's confidentiality provisions.

(2) If there are multiple subjects, there shall be separate notifications and separate meetings with the Board or its designee. The meeting dates may be extended for good cause.

(3) The purpose of the meeting is to afford the subject the opportunity to discuss and respond to the investigation and the evidence presented against him or her in the matter. The Board or its designee shall conduct the meeting so as to ensure order. The meeting is not an adjudicatory hearing: no oaths shall be administered and no rights shall be determined. The Board or its designee shall advise the subject, at the start of the meeting, that the purpose of the meeting is to give the subject an opportunity to respond to the Board's finding that evidence in the investigative report shows that there is probable cause to believe that the subject violated the Ordinance, and that any statements by the subject: (i) are voluntary; (ii) will be transcribed or otherwise recorded, and (iii) may be used in any later proceedings. The attendees shall be limited to the Board or its designee, and the subject and/or his or her representative(s), if desired. The meeting shall be recorded by a certified court reporter if agreed upon by the subject and the staff attorney, at the Board's expense. If there is no court reporter, the meeting shall be reliably recorded. The subject may obtain a copy of the recording upon request. The record of this meeting, and all materials discussed or submitted in it, shall remain confidential, subject to applicable state and federal law and, if applicable, Rule 1-3(2). A subject's failure to attend the meeting and to have an attorney or representative present at the meeting may be taken into account in the Board's consideration of the matter.

(4) If the subject and staff attorney agree, the meeting may be continued once; otherwise the meeting shall be deemed complete. The notices, writings, statements and transcribed recording of the statements and writings in the meeting, together with the investigating authority's report, shall comprise the record.

#### **C. Board action following the meeting with the subject**

At the next practicable Board meeting, the Board or its designee shall present to the Board: (i) a written report summarizing the meeting; and (ii) a recommendation to the Board as to whether to seek to settle or dismiss the matter, pursue an action for discipline or fine, or take other appropriate action. The Board

shall consider the record and may: (i) seek to settle the matter by fine, discipline or in other such manner as it deems appropriate; (ii) recommend discipline or pursue a fine; (iii) take no action, that is, dismiss the matter; (iv) issue a confidential letter of admonition if it finds that there has been a minor violation (according to the criteria set forth in Rule 3-11), provided that this confidential letter of admonition shall not be considered discipline; or (v) consult with the investigating authority and refer the matter to an appropriate law enforcement authority. If the Board determines to take no action, that is, dismiss the matter, it shall close the file and promptly notify (pursuant to Rule 2-13) the subject and investigating authority in writing, together with a statement explaining its finding.

#### **D. Settlement**

(1) If the Board determines to seek settlement of the matter, it shall (consistent with Rule 2-13) provide notice of its determination to the subject and the proposed terms of such settlement, which terms, if they include discipline, shall be subject to the approval of the subject's department, agency or office head. This notice shall include the amount of any fine or description of any recommended discipline or other proposed action, provided that: (i) if the settlement is with a current employee and the settlement proposal includes discipline, the Board or its designee shall first send a separate notice to the appropriate department, agency or office head summarizing the matter and proposed settlement and requesting a response within thirty (30) days, as to whether the department, agency or office head agrees or disagrees with the settlement proposal, and agreeing to impose the recommended discipline or proposing an alternative settlement offer as appropriate; and (ii) no such settlement that includes discipline shall become effective unless the department, agency or office head approves.

(2) In considering the possible settlement of any matter, the Board may: (i) consult with the subject and his or her representative(s), if desired, the Law Department, or the subject's department, agency or office head (or alderman, if the subject is a City Council employee), subject to the confidentiality requirements in the Ordinance and these Rules; (ii) consider the severity or minor nature of the alleged conduct; (iii) consider whether the alleged conduct is isolated or part of a pattern; (iv) consider whether the alleged conduct appears to indicate violations of other laws or rules of any jurisdiction; (v) consider the complexity of issues or facts and the efficacious resolution of the matter; (vi) consider the involvement of other proper authorities in the subject's conduct; (vii) consider Board precedent concerning similar conduct; (viii) consider the subject's prior contact with the Board; (ix) consider the age of the facts; (x) consider whether the subject self-reported any conduct to an investigating authority; and (xi) consider any other mitigating or aggravating circumstances.

(3) Any settlement agreement shall be in writing and provide for appropriate sanctions and procedures if breached, and shall become effective after the subject, the subject's representative (if applicable) and department, agency or office head accept/approve, and the Board determines, by majority vote, to accept it. The settlement agreement shall include a recital of the material facts and the reasons for entering into the settlement agreement. The Board shall make the full final settlement agreement, including the name of the subject of the investigation and the disciplinary measure and/or fine imposed, publicly available to the extent allowable by law, in a manner it determines. Except as may be provided by applicable law, all writings or records with respect to the settlement agreement or its negotiations in the Board's possession will remain confidential. When the Board approves any settlement agreement providing for discipline, it shall send the agreement to the respective department, agency, or office head for implementation of the discipline, and shall send a copy to the investigating authority.

#### **E. Fine or discipline**

If no settlement is reached, the Board shall, after a majority vote, and consistent with Rule 2-13, notify the subject in writing, with a copy to the department, agency or office head, if appropriate, of its decision as to whether it will pursue an action for a fine or for discipline.

(a) If the Board determines to pursue an action for discipline instead of a fine, it shall, within 40 days of its determination, submit a written recommendation with all the evidence and documents supporting its recommendation to the: (i) head of the appropriate department, agency or office; (ii) chair of the appropriate city council committee or to the appropriate alderman; or (iii) Mayor, if the subject is a department head or an appointed official. The person(s) to whom the Board has submitted this recommendation shall, within 30 days of receipt thereof (or an additional 30 days, if requested by the recipient), report to the Board in writing informing the Board of any actions taken on the recommendation, or explaining why any recommended action was not taken. Upon receipt of such response or report, the Board shall close its file and so notify the subject.

(b) If the Board determines that it shall pursue an action for a fine only, then the matter shall proceed to a merits hearing in accordance with §2-156-392 and Rule 4-2, below.

#### **4-2. Hearing on the merits pursuant to §2-156-392**

(1) The Board has the powers and duties to: (i) administer confidential merits hearings in accordance with §2-156-392; (ii) after such hearings, issue written opinions as to whether there has been a violation of this chapter; and (iii) impose appropriate fines for such violations.

(2) At any time after the Board's determination to pursue an action for a fine pursuant to Rule 4-1.E and before the hearing officer issues his or her report pursuant to Rule 4-2(16) below, the Board may dispose of the matter by settlement agreement, provided the settlement agreement conforms to the requirements of Rule 4-1(10) above.

#### **A. Action for fines, Board notices, appointment of hearing officer**

(1) (a) Upon determining to pursue an action for a fine pursuant to Rule 4-1.E above, the Board shall notify in writing the corporation counsel, the department of administrative hearings, the subject (hereinafter the "respondent"), of its determination, and forward the record to date to the corporation counsel, and the respondent.

(b) Within five (5) days of receiving the Board's notice, the Department of Administrative Hearings shall, in consultation with the Board, appoint a hearing officer for the matter, and the Board shall then promptly notify the respondent, the corporation counsel, and the investigating authority of the identity and hearing officer's contact information.

#### **B. Statement of charges, response**

(1) The corporation counsel or his designee (hereafter "the prosecutor") shall prepare a statement of the charges and, within 30 days of the Board's determination to pursue an action for a fine, serve the statement of charges upon the respondent, and shall also deliver a copy to the Board's Executive Director and the hearing officer. This statement of charges shall include: (i) a list of all witnesses the city may call at the hearing; (ii) a copy of all documents the city intends to introduce at the hearing; (iii) any potentially exculpatory material in the city's possession from the investigating authority's investigation; (iv) a notice of the hearing setting the date, time and place of the hearing; (v) a summary of the rules relevant to the hearing, including information concerning circumstances of adjournment and consequences of failure to appear; and (vi) a statement that the respondent may have a representative, may testify, may produce witnesses, may present documents and may examine opposing witnesses or evidence. The prosecutor may, upon written request to the hearing officer, request a one-time extension of up to thirty (30) days in which the prosecutor shall serve this statement of charges. The hearing officer may grant any subsequent request by the prosecutor for an extension only upon a showing of good cause. Nothing in these Rules shall be construed to limit or divest the prosecutor of the discretion to decline to file charges if, in the prosecutor's judgment, the evidence in the record does not support the charges, provided, however, that, if the prosecutor determines not to file charges, the prosecutor shall, within 10 days of its determination,

notify the respondent, the Board's Executive Director, the hearing officer, and the investigating authority of its determination. The prosecutor's determination and the notices provided thereto shall remain confidential except as may be otherwise required by law.

(2) Within 21 days after being served with the charges and other documents as provided in Rule 4-2(c), the respondent may answer the charges in writing, provided, however, that the respondent may, as a matter of right, upon written request to the hearing officer, request a one-time extension of up to 30 days to submit this written answer. The hearing officer may grant any subsequent request for an extension by the respondent only upon a showing of good cause. At least 10 days before the date of the hearing, the respondent shall provide to the prosecutor: (i) a list of all witnesses, if any, the respondent may call; and (ii) a copy of all documents the respondent intends to introduce at the hearing. If any testimony is in writing, it shall be sworn to and notarized under penalties of perjury.

(3) The respondent or the prosecutor may request, as a matter of right, a one-time extension of the date of the hearing for up to 30 days. If either the respondent or prosecutor requests subsequent extensions of the hearing date, the hearing officer may grant such extensions only upon a showing of good cause by the requesting party.

### **C. Motions, conduct of hearing.**

(1) Motions may be made only to the hearing officer in accordance with the schedule to be set by the hearing officer, provided, however, that motions that are dispositive shall not be considered by the hearing officer. At the request of the respondent, the prosecutor or the hearing officer, the Board may issue a subpoena pursuant to §2-156-380(c).

(2) The hearing officer shall preside over the hearing, consider and rule on motions, and regulate the hearing's course. Consistent with Rule 4-2(4), the hearing officer may rule on motions in advance of, or during the hearing, or take a motion under advisement and rule on it at the conclusion of the hearing. The hearing officer may set the schedule for filing motions and decline to consider a motion not timely filed.

(3) The City bears the burden of proof in the matter and therefore must proceed first. Pursuant to §2-14-076(i) of the Code, no violation may be established except upon proof by a preponderance of the evidence.

(4) All testifying parties and witnesses shall be administered an oath and instructed by the hearing officer as to the confidentiality of the proceedings.

(5) The respondent has the right to: (i) be present and/or be represented at the hearing, which shall not be public; (ii) testify on his or her own behalf; (iii) present witnesses and documents supporting his or her position; and (iv) conduct cross-examination.

(6) Subject to the discretion of the hearing officer, the order of proceedings shall be as follows: (i) the hearing officer shall determine whether the respondent has been afforded proper notice; (ii) opening statements; (iii) presentation of the City's case and continuances for good cause; (iv) presentation of the respondent's case and continuances for good cause; (v) presentation of rebuttal evidence; and (vi) closing arguments.

(6) The entire hearing, including motions and requests for extensions, if any, shall, at the Board's expense, be recorded, or transcribed by a court reporter, as determined by the hearing officer. The hearing officer shall compile and maintain the record of the hearing, including any recording or transcription of the hearing; all written, documentary, and physical evidence; and all written pleadings, motions or other submissions.

(7) Pursuant to §2-14-076(h) of the Code and §1-2.1-6 of the Illinois Municipal Code, the formal and technical rules of civil procedure and evidence shall not apply in the conduct of these hearings. Evidence, including hearsay, may be admitted if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. The hearing officer may ask questions of the parties and witnesses, if necessary, to ensure the clarity and completeness of the testimony and the record. The conduct of the hearing, including taking of evidence, shall be conducted in accordance with the Rules of the Department of Administrative Hearings, unless otherwise specified in these Rules.

#### **D. Report and recommendations of hearing officer**

After the conclusion of the hearing, the hearing officer shall consider the full record of the matter, including witness testimony and written evidence, and prepare a written report. The report will include a statement of facts and conclusions of law, and an analysis of and a recommendation on the charges. The hearing officer shall transmit this report to the Executive Director within 21 days after the conclusion of the hearing, unless the Executive Director extends that time.

#### **E. Final opinion of the Board**

(1) Within 40 days after the hearing on the merits (or within 40 days plus any additional time granted by the Executive Director pursuant to Rule 4-2.C (6), above), the Board shall vote on the hearing officer's recommendation, and issue a written opinion imposing a fine or stating that no violation has occurred. The Board's designee pursuant to Rule 4-1(1) shall not participate in the deliberation or drafting of any findings and opinions of the Board on the matter. The Board's opinion shall include an analysis of the evidence and of any provision of the Ordinance at issue. Subject to the confidentiality provisions of the Ordinance, the Board shall promptly provide its opinion to the respondent, prosecutor, hearing officer and investigating authority.

(2) The Board shall make its opinion publicly available in the manner it determines, provided, that, if the Board's opinion is that the respondent did not violate the Ordinance, the respondent's name or position shall not be made public unless the respondent requests otherwise in writing. All other reports, decisions, reasoning, or portions of any record, hearing, process or proceeding shall remain confidential, except as required by law.

(3) When the Board issues its opinion, the hearing officer shall turn over to the Board all documents, materials, copies, notes or memoranda in whatever format, related to the hearing.

(4) The Board shall assemble a complete record of the matter, including the record as provided in Rule 4-2(8) above, the hearing officer's report, and its own opinion. If applicable, the respondent's request for reconsideration and the Board's response (pursuant to Rule 4-3(1), below), shall become part of the record.

(5) If the Board's opinion is that the respondent did not commit a violation of the Ordinance, the respondent may submit a request to the Board seeking reimbursement of reasonable legal expenses, as provided in §2-156-392(c) of the Ordinance. If the Board grants this request, it shall make its finding public, pursuant to §2-156-392(c) of the Ordinance.

#### **4-3. Appeals**

(1) Petition for Reconsideration by the Board. The respondent may petition the Board to reconsider only its Final Administrative Decision (as defined in Rule 4-3(3) below) that the respondent violated the Ordinance and should be fined, provided that: (i) the respondent files a written petition with the Board within 14 days of the issuance of the Board's opinion; and (ii) the petition is based on newly discovered evidence or an intervening change in applicable law. Upon receiving a petition pursuant to this Rule 4-



3(1), the Board may reopen the hearing process, modify its opinion, or deny the petition. The Board shall inform the respondent of its decision in writing.

(2) Appeals. If the Board determines that the respondent violated the Ordinance and imposes a fine, the respondent may appeal the Board's determination to a court with jurisdiction to hear the matter. Only "final administrative decisions" (as defined in Rule 4-3(3)) finding a violation and imposing a fine, made under §2-156-392(6) and Rule 4-2(16)) may be appealed as provided by law.

(3) Final Administrative Decision. The act of the Board that confirms an administrative decision and constitutes the Board's final administrative decision is the vote of a majority of a quorum of the Board to find a respondent in violation of the Ordinance and impose a fine, pursuant to Rule 4-2(16) and §2-156-392(a)(6), or to deny a petition filed pursuant to Rule 4-3(1), at an open session of a scheduled or re-scheduled Board meeting in accordance with the Open Meetings Act.

#### **4-4. Confidentiality**

Except as may otherwise be required by law, all conclusions as to probable cause, referrals, determinations or adjudications with respect to violations of the Ordinance and recommendations thereon, including identities, the record, information, writings, communications and knowledge, shall be treated by the Board as confidential, except as necessary to carry out discipline of an employee or the powers and duties of the Board; provided, that without identifying the person complained against or the specific transaction, the Board may: (i) comment publicly on the general disposition of its requests and recommendations; and (ii) publish summary opinions to inform City personnel and the public about interpretations of the Ordinance.

#### **Rule 4-5. Petitions from the Office of the Legislative Inspector General ("OLIG") to Commence Investigations**

(1) In order to make a determination as to whether there is reasonable cause (as defined below in Rule 4-5(4), below) to authorize the OLIG to commence investigation pursuant to §2-55-080(b) of the Code, the Board shall consider any written petition from the OLIG presented at the executive session of a Board meeting. Absent a requirement for additional facts or other information from the OLIG, and in compliance with the Illinois Open Meetings Act, the Board shall make its determination.

(2) The OLIG's petition shall: (i) contain the facts alleged in the complaint on which the petition is based, and any other pertinent factual materials the OLIG desires to make as part of its petition; (ii) a general description of the activities engaged in by the OLIG prior to the presentation of this petition; and (iii) a summation of any preliminary or supporting evidence the OLIG has adduced prior to presenting the petition to the Board. The Board may request from the OLIG additional written facts or oral information prior to the Board's determination.

(3) The Board shall consider only the petition, attachments and any oral presentation of the OLIG, and then make its determination and advise the OLIG pursuant to the Ordinance's confidentiality provisions whether: (i) the OLIG should dismiss the complaint; (ii) there is reasonable cause for the OLIG to investigate the matter presented in the petition; (iii) the Board shall issue the OLIG a letter directing the OLIG to perform a limited fact-finding investigation and to return to the Board with another petition on the same subject matter; (iv) the Board reasonably believes that the alleged misconduct in the petition would violate a criminal law and, if so, thereafter, the Board or the OLIG as determined by the Board shall refer the matter to the appropriate law enforcement authorities; or (v) the Board deems the violation to be minor, and to refer the matter to the appropriate City Council committee or alderman for whom an employee works (as set forth in Rule 3-11).

(4) “Reasonable cause” means a reasonable belief that the complaint on which the petition is brought is valid, and that, if the allegations in the complaint are true, the conduct described in it would constitute a violation of the Ordinance. Factors for the Board’s consideration in determining reasonable cause include but are not limited to: (i) the nature of the misconduct; (ii) the last date of the alleged misconduct; (iii) the credibility of the complaint; (iv) the reliability and accuracy of the content of the petition and the complaint therein; (v) whether, assuming the facts in the complaint and petition are true, it would be reasonable to conclude that the alleged misconduct constitutes a violation of the Ordinance; (vi) whether the complaint alleges a facially reliable basis of knowledge of the alleged misconduct; and (vii) whether the subject of the petition falls within the jurisdiction of the OLIG and the Board.

(5) The Board shall not make a finding of reasonable cause under Rule 4-5(4) if it finds, by a preponderance of the evidence, that, prior to the alleged violation, the person investigated: (i) consulted with the Board or its staff regarding the matter and received an advisory opinion; (ii) disclosed truthfully all the pertinent and material facts; and (iii) committed the acts or violations alleged in the complaint in good-faith reliance upon the advice of the Board or Board staff.

**Rule 4-6. Ex parte communications.**

From the time the investigating authority requests a probable cause finding from the Board, through the time the Board closes the matter (as extended by appeal or reconsideration), neither the Board members nor staff may, except as provided in the Ordinance or these Rules, have any *ex parte* communication with any subject, representative of a subject or other interested party or, as applicable, representative or employee from the investigating agency, hearing officer or prosecutor, concerning the substance of the matter under consideration. In addition, the staff attorney working upon the matter shall not communicate with the Board, its members or fellow staff members concerning the substance of the matter during its pendency except as provided for in these Rules.

**Rule 5. Statements of Financial Interests**

- 5-1. Financial disclosure requirements**
- 5-2. Forms for statements of financial interests**
- 5-3. Place of filing**
- 5-4. Board administration of filing requirements of the governmental ethics ordinance**
- 5-5. Requests for exemptions under the governmental ethics ordinance**
- 5-6. Administration of filing requirements for candidates for elected city office**
- 5-7. Issuance of receipts**
- 5-8. Maintenance of filed statements**
- 5-9. Requests for copies of statements**
- 5-10. Enforcement actions**

**5-1. Financial disclosure requirements**

The Board is responsible for administering the financial disclosure requirements of Article 3 of the Ordinance, for all reporting individuals designated in §2-156-150(a) of the Ordinance.

**5-2. Forms for statements of financial interests**

The Board and staff shall prescribe such forms, including any electronic forms, as are required by Article 3 of the Ordinance. The staff shall prepare and timely have such forms available for all persons required to file their Statements with the Board.

### **5-3. Place of filing**

All reporting individuals designated in §2-156-150(a) of the Ordinance shall file their Statements of Financial Interests with the Board.

### **5-4. Board administration of the filing requirements**

The filing requirements of Article 3 of the Ordinance shall be administered according to the following schedule, and in accordance with Rule 8, below:

#### **(1) Statements of reporting individuals who become subject to the requirement by March 1 NO LATER THAN:**

January 15: the Board sends formal requests to all department heads, aldermen, the Mayor's Office and all ethics officers to identify reporting individuals for the Board.

February 1: the Board receives from the Mayor's Office, Department of Human Resources and Comptroller, and each department a list of all officials and employees who, as of January 1, are required to file the Statement of Financial Interests ("reporting individuals"). Upon receipt, the Board sends the list to the Department of Innovation and Technology for it to program the Board's electronic financial interest statements ("EFIS") filing system.

March 1: the Board provides notice in writing of the filing requirement to all reporting individuals, including aldermen. The Board also sends the list of reporting individuals to all ethics officers, department heads, aldermen, and the Mayor's Office.

April 1: the Board receives notice from department heads or other authorized City personnel (including ethics officers) of names of reporting individuals who have not received notice of filing requirement from the Board. Upon receipt of lists from department heads, the Board provides prompt written notice of the requirement to persons who are on list.

April 1: the Board provides written notice to all department heads and ethics officers of reporting individuals in their respective department or agency who have and have not filed Statements of Financial Interests.

April 15: the Board receives notice from the Comptroller and/or the Department of Human Resources of supplemental list of persons who have become reporting individuals since January 1. Upon receipt of such list, the Board provides written notice of the filing requirement to all persons on the list.

April 15: the Board provides a first written notice to reporting individuals who have **not** yet filed that they must file by May 31, with an explanation of penalties for failure to do so.

May 1: the Board sends to department heads, aldermen, the Mayor's Office and ethics officers an updated list of reporting individuals in their respective department or agency who have and who have not filed.

May 15: the Board sends a second written notice to reporting individuals who have not yet filed that they must file by May 31, with an explanation of penalties for failure to do so.

As soon as possible after May 31: the Board sends, via email, USPS or certified mail, due process notice to reporting individuals subject to the May 31 deadline who have not yet filed as provided in Rule 8.

**(2) Statements of reporting individuals who become subject to the filing requirement after March 1**

If an employee or official becomes subject to the filing requirement after March 1, the authority that appoints or hires that person (or its ethics officer) shall, with the assistance of the Board, promptly give notice to that person that he or she must file a Statement of Financial Interests with the Board. If practicable for Board staff, by November 1, the Board shall: (i) request from the Department of Human Resources an updated list of persons who have become subject to the filing requirement; and (ii) give written notice of the requirement to those persons on the list who have not yet filed a Statement of Financial Interests. If such reporting individual fails to file within thirty (30) calendar days of the notice, the Board shall send a second written notice that the reporting individual must file the Statement of Financial Interests within ten (10) days of the second notice or be in violation of the Ordinance.

**5-5. Requests for exemptions under the governmental ethics ordinance**

(1) Those appointed officials who serve in an agency that is solely advisory in nature and has no authority to: (i) make binding decisions; or (ii) enter into contracts or (iii) make any expenditures other than those incurred for research purposes, are exempt from filing annual Statements of Financial Interests.

(2) For appointed officials to receive this exemption, a City employee or official must submit a written request to the Board which explains how the agency might meet the criteria for exemption, as well as supporting documentation, such as bylaws, ordinances or executive orders which govern the conduct of the agency.

(3) After reviewing the information provided by the agency, the Board shall determine by advisory opinion whether the agency's request for an exemption will be granted or denied and notify the agency of the decision.

**5-6. Administration of the filing requirements for candidates for elected city office**

Section 2-156-150 of the Ordinance provides that every person who qualifies as a candidate for elected City office thereby becomes a "reporting individual" and must file a Statement of Financial Interests with the Board within five (5) days of becoming a reporting individual, unless he or she has already filed a Statement in that calendar year. The Board shall administer the filing requirement as follows:

(1) The date of qualification as a "candidate" is determined in accordance with the definition of the term "candidate" in Article 9 of the Illinois Election Code, codified at 10 ILCS 5/9-1 et seq., as amended.

(2) Five (5) days after qualifying as a candidate, the candidate must file a Statement of Financial Interests with the Board.

(3) Within seven (7) days of learning that a candidate has not met the filing requirement of §2-156-150 of the Ordinance, the Board shall send written notice that the candidate is required to file a Statement within fifteen (15) days of the date of the Board's letter, and explain the consequences for failure to file.

**5-7. Issuance of receipts**

After accepting as filed a Statement of Financial Interests, the Board shall issue a receipt to the person filing the Statement. The receipt shall state the date of the filing and acknowledge the filing.

**5-8. Maintenance of filed statements**

Statements of Financial Interest for all reporting individuals shall be maintained by or in the office of the Board or on the Board's website, and pursuant to any document retention schedule duly issued from the Local Records Commission of Cook County.

#### **5-9. Requests for copies of statements**

Any person wishing to examine or duplicate any Statement of Financial Interests filed with the Board but not available through the Board's website must complete a written or electronic request form prepared by the Board or acceptable under the FOIA. Such person must indicate: (i) the date of the request; (ii) the name of the person whose Statement is requested; (iii) the year of that Statement; and (iv) whether the request is for commercial purposes. The Board may also ask for additional information about the person requesting such Statement, provided that such information shall be optional only and shall in no way affect the availability for examination or duplication of the requested Statement. A separate request must be completed for each Statement to be examined or duplicated.

#### **5-10. Enforcement actions**

All enforcement actions as to those reporting individuals who have failed to file their Statements by the appropriate deadlines in the Ordinance shall be conducted in accordance with Rule 8, below.

### **Rule 6. Lobbyist registration and disclosure**

#### **6-1. Registration**

#### **6-2. Preparation of lobbyist forms**

#### **6-3. Access to filed lobbyist information**

#### **6-4. Opinions, complaints and investigations regarding lobbyist registration and disclosure**

#### **6-5. Waivers of lobbyists' fees**

#### **6-6. Periodic notices to lobbyists**

#### **6-7. Enforcement actions**

#### **6-1. Registration and compensation reporting by lobbyists**

(1) The Board is responsible for administering the registration of lobbyists as provided by Article 4 of the Ordinance. A lobbyist shall not be considered registered or his or her registration considered properly amended until: (i) the Board staff has approved the statement of registration and/or any amendments to it; and (ii) the lobbyist has paid any associated fees.

(2) Compensation paid to a lobbyist's employer as described in this Rule 6 shall be deemed to be paid to the lobbyist.

(3) If a lobbyist has more than one person employing him or her (including being employed by an entity in which the lobbyist has an ownership interest) for whom he or she is intended to perform lobbying activities, then the lobbyist must file separate registration statements for each of those employers. If the lobbyist is already registered during a calendar year and that registration discloses a different employer, then, for that calendar year, the additional registration shall require no further base fee or additional fees for clients listed in the existing registration.

#### **6-2. Preparation of lobbyist forms**

The staff will prepare, revise as necessary and timely make available to all persons required to register as lobbyists such forms, including electronic forms, and information as shall be required for the effective administration and enforcement of Article 4 of the Ordinance. All persons required to register as lobbyists shall perform all registration, activity report, and any amendments thereto, or termination filings using ELF, including lobbyist activities occurring pursuant to the procedures set forth in Rule 8.

### **6-3. Access to filed lobbyist information**

(1) Registration statements and amendments to them, reports of compensation and expenditures and amendments to them, and notices of termination shall be filed and maintained in or by the office of the Board in such formats as the Board may prescribe from time to time.

(2) A list of registered lobbyists shall be made available to the public in the manner directed by the Executive Director.

### **6-4. Waivers of lobbyists' fees**

(1) Pursuant to §2-156-230(d) of the Ordinance, the Board has the authority to grant a waiver (or reduction) of lobbyist registration and client fees for a specific lobbyist, provided that the lobbyist requests such a waiver in writing and provides documentation as specified below. The Board designates its Executive Director to carry out these Rules with respect to such fee waivers. The Executive Director shall consider and grant such requests from any person paid to lobby by a non-profit entity with for-profit members and either:

(a) the lobbyist's primary lobbying responsibilities are to foster small business initiatives primarily within a single official community area or neighborhood within the meaning of §1-14-01 of the Code, and the lobbyist provides a copy of: (i) the entity's current certificate of good standing from the appropriate state's secretary of state (or other registrar) or comparable document; (ii) the entity's certificate demonstrating registration under the appropriate not-for-profit corporation act from either the Illinois Secretary of State (or other state registrar) or comparable document; (iii) the lobbyist's original or facsimile signature on the entity's letterhead stating that the lobbyist's primary lobbying responsibilities are to foster small business initiatives primarily within a single official community area or neighborhood; and (iv) such other documentation as the Board may reasonably require to ensure that the lobbyist has conformed to the intent of §2-156-230(d) of the Ordinance; or

(b) the non-profit has been approved or is pending approval by the city council to be a special service area service provider for the city, and the lobbyist provides a copy of: (i) the currently effective ordinance introduced to or passed by city council showing the relevant service area, name and numeric designation of the special service area commission, and name of the service provider, and evidencing that the service provider is the same entity for which the lobbyist works and that pays the lobbyist; (ii) the entity's contract with the special service area commission; (iii) the special service area's budget; (iv) and such other documents as the Board may reasonably require to ensure the lobbyist has conformed to the intent of §2-156-230(d).

(2) If a lobbyist is employed by or works for more than one not-for-profit entity as employer, client or both, he or she may request a waiver for multiple non-profit entities. However, a lobbyist may not receive a waiver if he or she lobbies on behalf of a for-profit entity or individual engaged in a for-profit enterprise, even if that entity or individual is a member of a not-for-profit entity by which the lobbyist is employed or for which the lobbyist also performs lobbying.

### **6-5. Periodic notices to lobbyists**

The schedule for the Board to administer Article 4 of the Ordinance with respect to lobbyists is as follows:

(a) On or before the first day of each calendar quarter except January 1, the Board sends a courtesy email notice to all lobbyists through the Board's Electronic Lobbyist Filing ("ELF") system to remind them that their quarterly activity reports are due by the 20<sup>th</sup> of the month succeeding the last day of the quarter; the fourth notice is sent in late December as a reminder for the filing of the last quarter. That notice also

reminds the lobbyists that they must submit either a re-registration or termination of their registration with their activity report due January 20.

(b) If the filing(s) is not made on the 20<sup>th</sup>, within 15 days thereafter, the Board sends an email reminder to each non-compliant lobbyist that the filing is due within 10 days of the date of the notice. If a lobbyist has filed the activity report between its due date and the date the Board is to send the notice required by this Rule, then the Board shall not send the notice.

(c) If the lobbyist still has not filed after the 10 day period, as soon practicable, whether by email or USPS or certified mail, the Executive Director shall send a due process notice as provided in Rule 8.

#### **6-6. Enforcement actions**

All enforcement actions as to those lobbyists who have failed to register or terminate or file activity reports as required shall be conducted in accordance with Rule 8.

### **Rule 7. Ethics education**

#### **7-1. Required ethics training**

#### **7-2 Notifications sent by the Board**

##### **A. Lobbyist training**

##### **B. Mandatory annual training for city employees and officials**

#### **7-1. Required ethics training**

Sections 2-156-145, 2-156-145(b), and 2-156-146 of the Ordinance set forth, respectively, among other things: (i) a mandatory quadrennial in-person ethics education seminar attendance requirement for aldermen, members of an alderman's personal staff, city council committee staff members and each person holding a senior executive service position with the city; (ii) a requirement that all aldermen, City employees and appointed officials complete an annual ethics education program as designed by the Board; and (iii) a requirement that each lobbyist complete in each consecutive twelve month period (beginning July 1, 2010) an ethics education training course developed by the Board. The Board shall make this training available to all person required to complete it.

#### **7-2. Notifications sent by the Board**

##### **A. Lobbyist training**

(1) On or about June 1, the Board shall send written notification to each lobbyist who has not completed his or her required annual training of the June 30 deadline and of the penalties for non-compliance.

(2) Pursuant to §2-156-146 of the Ordinance, lobbyists must complete their training by midnight on June 30 each year. Thereafter, the Executive Director sends those who are non-compliant, as soon as practicable, a certified mail, USPS or email due process notice to non-compliant lobbyists as provided in Rule 8.

##### **B. Mandatory annual training for city employees and officials**

(1) Each department head, alderman or ethics officer shall provide to the Board the schedule by which they intend to have their employees and officials complete the annual training. One month after the date on which that department or office has indicated that its training commenced, the Executive Director will send each department head, alderman and ethics officer a list of employees and officials who have and have not yet completed training. The Executive Director shall also send such list of appointed officials on the first of each month to the designated representative from the Office of Legislative Counsel and Government Affairs.

(2) On December 1 or the first business day thereafter, the Executive Director shall send written reminder notices to all employees and officials who have not completed training on December 1.

(3) Pursuant to §2-156-145(b) of the Ordinance, employees and elected officials must complete their training by midnight on December 31 each year, except as provided in Rule 7.B(4), below. After each department or ward has commenced training, the Executive Director shall send lists monthly to the Mayor's Office, each department head, the ethics officers and aldermen stating who has and who has not completed training. The Executive Director will send a reminder to non-compliant appointed official trainees and ethics officers for non-compliant employee or aldermanic trainees on December 1 each year. Thereafter, the Executive Director sends a due process notice to non-compliant trainees in conformance with Rule 8.

(4) For persons who begin City service on or after December 1, the Board shall, on or about December 15, request their names and start dates from each ethics officer and advise the officers to encourage these new City personnel to complete training by midnight on December 31, and provide notice to such new personnel to do so; provided, however, that, for those who have not, the Board shall send them a written notice on or about January 15 that will give them a specified date (not to exceed one month from the date of this notice) to complete the training for the previous calendar year. Thereafter, the Executive Director shall send a due process notice to non-compliant trainees in conformance with Rule 8.

#### **Rule 8. Executive director's authority with respect to enforcement**

A person may contest the imposition of a fine or sanction imposed pursuant to §2-156-505 of the Ordinance by the Executive Director of the Board pursuant to this Rule 8.

(1) This Rule 8 applies to: (i) §§2-156-145 and 2-156-146 (ethics training); (ii) §2-156-190 (failure to timely file statements of financial interests); (iii) §2-156-245 (failure to register as a lobbyist as required); and (iv) §2-56-270 (failure to timely file lobbyist activity reports).

(2) The Executive Director shall find probable cause for his or her conclusion that a violation has occurred of a section cited in Rule 8(1) on the basis that the required training or filing had not timely or properly been completed by 11:59:59 p.m. on the date specified in the Ordinance or these Rules. The Executive Director shall make this finding within three (3) days of receiving all necessary information regarding a failure to complete training by the specified deadline.

(3) Upon the Executive Director's finding pursuant to Rule 8(2), the Executive Director (or a designated member of his or her staff) will, within three (3) days after the finding, send a written notice to whom the finding was made of the following: (i) that the Executive Director has found probable cause of a violation; (ii) the nature of the violation, with a citation to the Ordinance section and appropriate sanctions; (iii) a statement that the person must cure the violation, which requirement shall be independent of other matters in the Executive Director's notice; (iv) an opportunity for the person to respond in writing to the Executive Director within seven (7) days of the date of the notice; (v) that should the person not respond, the Executive Director shall determine that the violation is sustained; (vi) that if the person does so respond, but the response does not warrant reversal of the probable cause finding, the Executive Director will determine that the violation is sustained; and (vii) if the Executive Director determines that the finding of a violation is sustained, the Executive Director shall impose the sanctions prescribed in §2-156-465 of the Ordinance, specifying the possible sanction in the notice.

(4) The person's response to the notice in Rule 8(3) shall be the sole method of contesting the imposition of sanctions as provided for in §§2-156-465 and 2-156-505. In administering Rule 8(3)(vi) herein, the



Executive Director may exercise the Executive Director's discretion to determine whether the lobbyist's response warrants reversal of the Executive Director's probable cause finding. The Executive Director shall apply an unforeseeable mitigating circumstances standard. Examples of an "unforeseeable mitigating circumstance" shall include, but not be limited to: (i) computer, server or internet malfunction; (ii) health of the lobbyist or of his or her immediate family, or a family emergency; (iii) active duty in the military service; or (iv) loss of a lobbyist's original (and only) documentation resulting from fire, flood or other act of nature.<sup>1</sup> The Executive Director shall require an affidavit or another such form of affirmation of such malfunction prior to reversal of a probable cause finding.

(5) If the Executive Director timely receives a response to the notice described in Rule 8(3), the Executive Director shall consider the response, and, within 14 days, reply in writing to the person setting forth the Executive Director's determination.

(6) The Executive Director's determination does not excuse the person from curing or completing any incomplete training or filing as required in the Ordinance provisions set forth in Rule 8(1).

(7) If the Executive Director imposes any fine(s), he may refer the matter confidentially to the Department of Law for it to proceed as it deems necessary for collection; provided, however, that the Executive Director may not assess a fine pursuant to Rule 8(3) until seven (7) days after sending the notice in Rule 8(3).

(8) The Executive Director shall report to the Board the status of all such determinations made pursuant to this Rule 8, and shall make public the names of all such persons in the manner that the Board directs.

#### **Rule 9. Waivers**

(1) Pursuant to §2-156-402 of the Ordinance, the Board may grant any current or former City employee or official waiver from compliance with respect to the following provisions of the Ordinance: (i) §2-156-142(a) (gifts) to the extent the waivers apply to material or travel expense for meetings; (ii) §§2-156-100 and 2-156-105 (post-employment restrictions); (iii) §2-156-110 (financial interest in City business); and (iv) §2-156-111(d) (the reverse revolving door restrictions) as to matters related to a city official's or employee's immediate former employer or client.

(2) In order for the Board to grant a waiver, a current or former city employee or official must request it in writing. The request must include: (i) the name of the requestor; (ii) the requestor's agency and where the requestor works; (iii) the requestor's title; (iv) the requestor's responsibilities; (v) a detailed description of the situation; and (vi) permission for the Board or its staff to communicate with third parties as necessary and appropriate for the Board to determine whether to grant or deny the waiver.

(3) The Board may grant a waiver with conditions, restrictions or limitations, including that the waiver may be withdrawn or modified upon contingencies set forth in the waiver grant from the Board.

(4) The waiver itself, if granted, shall be made public in a manner prescribed by the Board. However, the request and any information or documents related to the request or the Board's determination shall not be made public and shall be and remain subject to the Ordinance's and Board's rules on confidentiality.

(5) If the waiver request discloses a past or existing violation of the Ordinance that is not minor, the Board shall share that information with the appropriate investigating authority pursuant to Rule 3-11.

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<sup>1</sup> See Miss. Code Ann. §5-8-17 and Illinois Administrative Code Title 2, Subtitle C, c. III, §560.390 (b).

(6) Upon receiving the waiver request, obtaining all necessary additional information, and considering the request, the Executive Director shall recommend that the Board grant or deny a complete or limited written waiver to the city employee or official. The Executive Director shall retain a copy of the grant or denial in the Board's files; report on the matter to the Board pursuant to the Open Meetings Act; and make the waiver public in a manner prescribed by the Board.

**Rule 10. Making Board matters public**

The Board may prescribe one or more methods of making settlements, advisory opinions, determinations and findings available to the public, including, but not limited to: making copies in writing available to the public at its office, in paper form; on its web site; through the media; or in another manner as the Board may prescribe from time to time, consistent with these rules and the purposes of §2-156-380(h)(i)-(iv).